

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ALEX SIGAL,	:	APPEAL NO. C-160433
	:	TRIAL NO. 15CV-00635
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
VALERY KAPITULA,	:	
and	:	
LNA CONSTRUCTION, LLC,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Alex Sigal sued defendants Valery Kapitula and LNA Construction, LLC, (“LNA”) for breach of contract and conversion. Following a bench trial, the court held in favor of Kapitula and LNA as to both claims. Sigal now appeals. Neither Kapitula nor LNA entered an appearance in this appeal.

Regarding the breach-of-contract claim, Sigal contended that Kapitula and LNA owed him money for work that he had performed on construction projects for them. Sigal testified that he had worked 71 eight-hour days for Kapitula and LNA at the rate of \$18 an hour. Sigal never submitted timesheets to Kapitula or LNA, despite being asked to do so. And he testified that he did not otherwise report his hours to them. Sigal offered no documentation to the court that had been created at or near the time that he had worked that reflected an accounting of his work hours.

Kapitula testified that he had kept track of Sigal's work hours by writing them down, and that he had paid Sigal accordingly in cash. Kapitula stated that many of the days Sigal claimed to have worked, he did not, and that Sigal had been paid in full for the work that he had performed.

Sigal created a calendar for trial showing the days he claimed to have worked, and the number of hours worked each day. The court admitted the calendar into evidence. Kapitula presented the court with a sheet of paper containing handwritten notations by Kapitula showing multiple payments that Kapitula had made to Sigal totaling \$6,620. Sigal claimed that he had been paid only \$5,620, leaving a balance due of over \$4,000.

Sigal's conversion claim arose from Sigal's allegations that Kapitula had failed to return a construction light and two architectural digests to him. Sigal asked for \$150 in damages for the light, and \$390 for the digests. Kapitula stated that he had thrown out Sigal's light because it did not work and was worthless. Kapitula stated that he did not have Sigal's digests.

In the trial court's decision denying Sigal's claims, the court noted that Sigal had not submitted timesheets or otherwise reported the number of hours that he had worked, that Sigal had not kept track of the payments that Kapitula had made to him, and that Sigal failed to produce at trial any written time sheets or payment receipts. This appeal followed.

In his first assignment of error, Sigal claims that "the trial court erred in finding that it is the obligation of an employee to keep a record of the hours worked each day and not the employer's obligation." Sigal correctly cites R.C. 4111.08 for the rule that an employer, and not an employee, must maintain a record of each employee's hours and amounts paid. However, the record does not reflect that the

trial court applied this standard when ruling. It was Sigal's burden at trial to show by a preponderance of the evidence that Kapitula and LNA had breached their contract with Sigal by not paying him for the hours that he had worked. *See Stephan Business Ent., Inc. v. Lamar Outdoor Advertising Co.*, 1st Dist. Hamilton No. C-070373, 2008-Ohio-952, ¶ 16. The court's findings simply supported its conclusion that Sigal did not prove his case. The court never held that Sigal's breach-of-contract claim failed because it had been Sigal's obligation to keep track of his work hours. Further, Kapitula testified that he did, indeed, write down the number of hours that Sigal had worked each day. Presumably, these records could have been obtained through discovery and produced at trial.

In sum, Sigal's alleged error is not supported by the record. *See Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980) (the appellant bears the burden to demonstrate error by reference to matters in the record). The first assignment of error is overruled.

In his second assignment of error, Sigal claims that the trial court erred in finding that he had failed to produce written evidence of his work hours and the amount of money owed to him.

Specifically, Sigal asserts that the calendar he had created for trial and the handwritten payment notations that Kapitula had made were erroneously overlooked by the trial court. Sigal seems to contend that because the trial court's decision states that Sigal had failed to produce "any receipts" or "written time slips," that it had failed to consider this evidence. This argument has no merit. The trial court's decision accurately reflected what had occurred at trial. The fact that the court did not reference the calendar or the handwritten payment notations does not demonstrate that it had failed to consider these documents when ruling on Sigal's

breach-of-contract claim. We therefore overrule Sigal's second assignment of error. *See Knapp* at 199.

In his third assignment of error, Sigal claims that the trial court's judgment was against the manifest weight of the evidence. Sigal presented a version of events at trial that, if believed, would have resulted in a favorable verdict. However, there is no indication that, in weighing the evidence presented, the trial court so lost its way as to create a manifest miscarriage of justice warranting reversal on appeal. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12-23; *State v. Martin*, 20 Ohio App.3d 172, 175, 678 N.E.2d 541 (1st Dist.1997). Sigal's third assignment of error is therefore overruled.

The trial court's judgment is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on April 7, 2017
per order of the court _____.

Presiding Judge